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09/817,278	03/27/2001	Paul Adams	618-979	7709

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EXAMINER

FERKO, KATHRYN P

ART UNIT

PAPER NUMBER

3743

DATE MAILED: 05/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/817,278

Applicant(s)

ADAMS ET AL.

Examiner

Kathryn Ferko

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-77 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 44 is/are allowed.
- 6) ☒ Claim(s) 1-43 and 45-77 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on April 8, 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) Z.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Drawings***

The amended drawings have been acknowledged.

### ***Specification***

The amendments to the specification have been acknowledged.

### ***Claim Objections***

The amendment to claim 58 has been acknowledged and the objection is withdrawn.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Liang.

Liang clearly discloses a lighter with a housing, elements 1 and 1", as described in column 1, lines 66-69 and column 2, lines 1-3 and seen in figure 1. There is an actuating member movable to selectively ignite the fuel and the actuating member is associated with the housing, as seen in figure 7. Liang also illustrates a movable wand assembly that is associated with the housing and operatively associated with the actuating member such that when the wand is in a first position the actuating member is unable to ignite the fuel. As seen in figure 1, when the wand is rotated to the closed position, the wand blocks the actuating assembly. Additionally, when the wand is in a second position, the actuating member is movable sufficiently to ignite the fuel. Once the wand is moved to the open position and the control knob is moved to allow actuation, the lighter can ignite. The wand can be releasably positioned in intermediate positions between the closed and extended positions as disclosed in column 4, lines 32-44. Additionally, the wand is releasably positioned in either the open or closed positions. The lighter housing defines the longitudinal axis defined by 8-8 on figure 1. The wand assembly then pivots about a transversely extending pivot axis that is perpendicular to the longitudinal axis as shown in figures 4 and 5. Referring to figure 1, the housing, element 1' defines a first side and element 1 defines a second side where the wand assembly is located between the first and second sides. Also, as seen in figures 4 and 5 the wand assembly includes a

hub/locating block, element 2, which is connected to the wand and the housing and has an undulating outer surface.

3. Claims 52 and 68 are rejected under 35 U.S.C. 102(a or e) as being anticipated by Sung in US Patent No. 6,213,759.

Sung clearly discloses a lighter, element 10', having a housing, element 12, with a supply of fuel, element 26; an ignition assembly for igniting the fuel; a wand assembly, element 14, associated with the housing; a nozzle, element 16, for releasing fuel; an actuating member, element 18, operable to selectively actuate the ignition assembly; a conduit, element 28, extending through the wand assembly having a tube defining channel for conveying the fuel from the supply to the nozzle; and a coiled wire receiving in the channel and electrically connected to the ignition assembly and the nozzle, as seen in figure 2.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 22 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liang in view of Sung in US Patent No. 6,213,759.

Liang clearly discloses of a wand assembly including a hub rotatably connected to the housing and a wand connected to the hub where the hub as an undulating surface as described above in paragraph 4. However, Liang does not

disclose a wand that has a high-wand-force position and a low-wand force position, a pivoting force that when applied to the wand is greater in the high-wand-force position, or a first and second actuating force where the first is greater than the second. Sung clearly illustrates a lighter having a housing with a supply of fuel, column 9, lines 34-35 and column 10, lines 1-3, and an actuating member associated with the housing for selectively igniting the fuel, figures 2-4. Sung also discloses a first member position and a second member position where the first actuating force to the actuating member required is greater than the second actuating force to the actuating member which can be considered a high-wand-force position and a low-wand force position, as shown in column 5, lines 41-44. It would have been obvious to modify the movable wand lighter assembly of Liang to incorporate a variable/low and high-wand-force positions for the purpose of deterring unintended users. Also, it would have been obvious to one with ordinary skill in the art to use a pivot to the wand to result in a pivot force that is greater in the high-wand-force position than in the low-wand-force position. Furthermore, it appears that the applicant is discussing a high-wand-force and a low-wand-force position, which are not explicitly directed to an actuation force. Therefore, a reasonably broad interpretation has been made and the combination of references is justified.

6. Claim 58 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sung in US Patent No. 6,213,759 in view of Liang.

Sung discloses a lighter, element 10', having a housing, element 12, with a supply of fuel, element 26; an ignition assembly for igniting the fuel; a wand assembly, element 14, associated with the housing; a nozzle, element 16, for releasing fuel; an actuating member, element 18, operable to selectively actuate the ignition assembly; at least one member fluidly connecting the supply to the nozzle and electrically connected to the ignition assembly and the nozzle where the member extends partially through the wand, as recited in column 5, lines 1-30 and seen in figure 2. However, Sung does not explicitly disclose a wand that is pivotally associated with the housing or a wand that pivots about a pivot axis where the member is spaced from the pivot axis. On the other hand, Liang teaches of a wand that is pivotally associated with the housing and a wand that pivots about a pivot axis where the member is spaced from the pivot axis, as stated in claim 1 and seen in figure 1. Additionally, the wand is releasably positioned in either the open or closed positions. The lighter housing defines the longitudinal axis defined by 8-8 on figure 1. The wand assembly then pivots about a transversely extending pivot axis that is perpendicular to the longitudinal axis as shown in figures 4 and 5. Therefore, it would be obvious to one with ordinary skill in the art at the time the invention was made to modify the assembly of Sung to include a pivotal wand for the purpose of increased safety and ease of storage.

***Allowabl Subj ct Matter***

7. Claim 44 is allowed.

8. The following is a statement of reasons for the indication of allowable subject matter: the prior art does not disclose a wand assembly including a hub rotatably connected to the housing and a wand connected to the hub, where the wand pivots about a transversely extending pivoting axis that is substantially perpendicular to the longitudinal axis in conjunction with a hub that has an outer surface with a plurality of detents.

***Response to Arguments***

9. Applicant's arguments filed April 8, 2002 have been fully considered but they are not persuasive.

With regard to claims 1 and 34, Liang does disclose a movable wand assembly associated with the housing and operatively associated with the actuating member such that when the wand is in a first position, the actuating member is immobilized sufficiently to prevent ignition. Additionally, the wand is movable between a closed and extended position and positionable in an intermediate position. The wand is operatively associated with the actuating member for when it is rotated to a closed position ignition cannot occur. When positioning the wand assembly from the first to second positions it rotates through many intermediate positions wherein completed rotation is not required.

With regard to claims 22 and 45, given the pivoting utility lighter of Liang there is clear motivation to combine the method for prohibiting unintentional users where in different force requirements are utilized, as taught by Sung. Since control knobs and latch release mechanisms are both common safety mechanisms and either could be employed to achieve the same purpose.



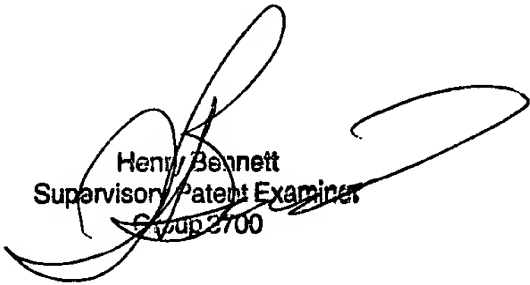
**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathryn Ferko whose telephone number is (703) 306-3454. The examiner can normally be reached on M-F (7:30-5:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A Bennett can be reached on (703) 308-0101. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

KF  
April 30, 2002

  
Henry A Bennett  
Supervisory Patent Examiner  
Group 2700